

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAROLD M. ARMSTRONG, JR.,

Petitioner,

-against-

06 Civ. 0785 (LAK)

CRAIG APKER,

Respondent.
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ORDER

LEWIS A. KAPLAN, *District Judge*.


Petitioner seeks a writ of habeas corpus invalidating the Bureau of Prisons' February 14, 2005 amendment to 28 C.F.R. § 570.21, the rule governing the designation of inmates to community corrections facilities, and requiring respondent to consider transferring him to such a facility without regard to that rule.

The Court previously denied an identical petition, adopting the majority view among courts in this circuit that the rule “is a permissible, albeit categorical, exercise of the BOP’s broad discretion to designate and transfer inmates under 18 U.S.C. § 3621(b).” *Iannico v. Apker*, No. 05 Civ. 6072 (S.D.N.Y. Mar. 6, 2006) (quoting *Charboneau v. Meniffee*, 05 Civ. 1900 (MBM), 2005 WL 2385862, at *3 (S.D.N.Y. Sept. 28, 2005)); *see also, e.g., Lowy v. Apker*, 05 Civ. 10336 (LBS), 2006 WL 305760, at *2 n.6 (S.D.N.Y. Feb. 9, 2006) (upholding the regulation after noting that a “majority of the courts in the Southern District of New York to have considered these regulations have upheld them”); *Eli v. Apker*, 05 Civ. 2703 (DC), 2005 WL 2848956 (S.D.N.Y. Oct. 28, 2005) (upholding the regulation); *Bialostock v. Apker*, 05 Civ. 2698 (RJH), 2005 WL 1946480 (S.D.N.Y. Aug. 12, 2005) (same); *Gentzler v. United States*, 05 Civ. 4521 (LTS), 2005 WL 1773684 (S.D.N.Y. July 27, 2005) (same); *Moss v. Apker*, 376 F.Supp.2d 416 (S.D.N.Y. 2005) (same); *Troy v. Apker*, 05 Civ. 1306 (GEL), 2005 WL 1661101 (S.D.N.Y. Jun. 30, 2005) (same); *Levine v. Meniffee*, 05 Civ. 1902 (RCC), 2005 WL 1384021 (S.D.N.Y. Jun. 9, 2005) (same); *Levine v. Apker*, 05 Civ. 3472 (CLB), 2005 WL 1417134 (S.D.N.Y. May 20, 2005) (same); *Yip v. Fed. Bureau of Prisons*, 363 F.Supp.2d 548 (E.D.N.Y. 2005) (same).

I reach the same conclusion here. Accordingly, the petition is denied.

SO ORDERED.

Dated: March 28, 2006



Lewis A. Kaplan
United States District Judge

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